



## Direct Payments

# Eligibility for direct payments of the Common Agricultural Policy

*This fiche summarises the basic definitions and eligibility conditions for Direct Payments under Regulation (EU) No 1307/2013 as modified by Regulation 2017/2393 (omnibus Regulation) and presents in graphical format some of the main policy choices that Member States have made in this respect. It reflects the content of the notifications available to the Commission services to date. It is made available without prejudice to any finding in respect of their compliance with the regulatory framework. It is provided on the understanding that in the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.*

**May 2019**

Direct payments are granted to farmers in the form of a per-hectare basic income support (the [Basic Payment Scheme/Single Area Payment Scheme](#)), complemented by a series of other supports targeting specific objectives or types of farmers (the "green" direct payment, the redistributive payment, the voluntary coupled support, the payment to young farmers and the payments for areas with natural constraints)<sup>1</sup>. They are meant to provide a safety net acting as a buffer to farmers' income stemming from sales on the markets, which are subject to volatility, and to compensate for the low profitability of the sector.

This note summarises the basic provisions which beneficiaries need to respect in order to be eligible for direct payments<sup>2</sup>:

- ⇒ comply with the so-called "minimum requirements",
- ⇒ be active farmers,
- ⇒ have agricultural land at their disposal that is used for agricultural activity.

<sup>1</sup> For more information on the 2015-2020 direct payment schemes, please see: [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/basic-payment\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/income-support/basic-payment_en)

<sup>2</sup> Regulation (EU) No 1307/2013

In Member States implementing the Basic Payment Scheme, farmers must also hold **payments entitlements** which give right to a predetermined amount per hectare. For more information on the conditions to receive such payment entitlements, please see the informative note on the ['Basic Payment Scheme'](#).

In order to access the payments, farmers have to **submit an aid application** declaring, inter alia, all the agricultural parcels on the holding every year. Member States help farmers with a draft (pre-established) aid application, in a graphical format such as maps or satellite imagery, indicating the areas determined in the previous year.

Other conditions have to be respected by farmers benefiting from direct payments (such as [cross-compliance](#)) but these are not *per se* eligibility conditions. They trigger penalties when they are not fully respected.

## 1. TO COMPLY WITH THE "MINIMUM REQUIREMENTS"

Direct payments can only be granted above certain thresholds defined by Member States and designed as the "minimum requirements"<sup>3</sup>. Generally, direct payments are not granted where the amount of direct payments to be granted is less than an amount between €100 and €500 and/or where the claimed eligible area is less than an area ranging from 0.3 ha to 5 ha, depending on Member States' decisions.

Those minimum requirements are meant to avoid the excessive administrative burden caused by managing payments of small amounts.

The decisions taken by the Member States on minimum requirements for receiving direct payments are summarised in the Annex.

## 2. TO BE AN ACTIVE FARMER

In order to be eligible to receive direct payments, applicants have to be active farmers.

- **Definition of farmer**

According to Regulation (EU) No 1307/2013, a **farmer** is a natural or legal person, or a group of natural or legal persons, whose holding is situated within the territory of the European Union and who exercises an agricultural activity (see next section)<sup>4</sup>. No particular legal status is required.

- **Who are active farmers?**

Further to meeting the definition of farmer, candidates also have to be **active farmers**. The active farmer definition aims at preventing individuals and companies from receiving support from the CAP when their business is not agricultural or is only marginally so.

It relates to several possible elements:

- a) Those farmers who have mainly areas which do not need any intervention to remain in a state suitable for grazing or cultivation and who do not perform a minimum activity on those areas, whatever the level of direct payments they were granted in the previous year, are considered non-active and may not receive support<sup>5</sup>. This element is non-optional.
- b) The negative list of businesses/activities<sup>6</sup>, which includes airports, waterworks, real estate services, railway services and permanent sport and

<sup>3</sup> Article 10 of Regulation (EU) No 1307/2013

<sup>4</sup> Article 4 (1)(a) of Regulation (EU) No 1307/2013

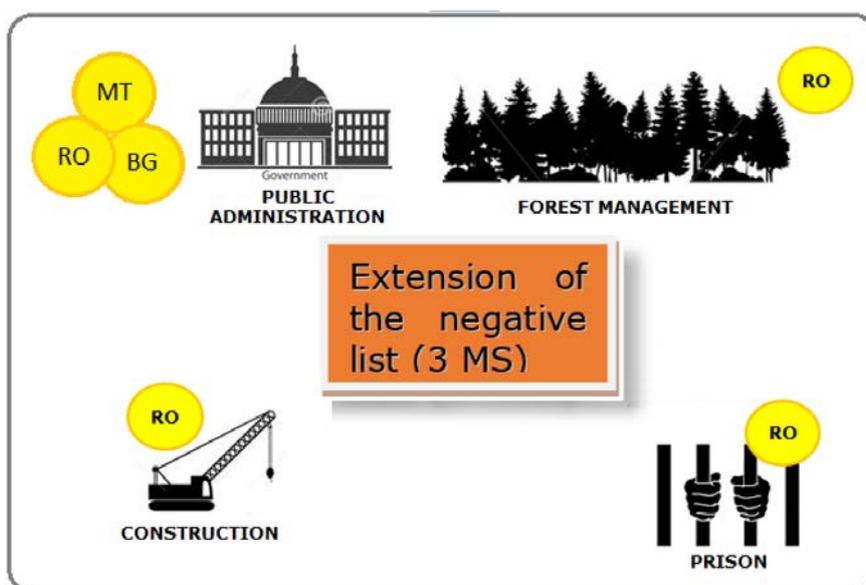
<sup>5</sup> Article 9(1) of Regulation (EU) No 1307/2013

<sup>6</sup> Article 9(2) of Regulation (EU) No 1307/2013

recreational grounds. Generally speaking, entities with activities on the negative list are not usually farms. They just happen to have some land, which might be considered farmland. Until claim year 2017 in all Member States, entities operating an activity on the "negative list" were not considered "active farmers" unless they could prove that their farming activity is not marginal, using one of the 3 possibilities to rebut the negative presumption. The omnibus Regulation has made this provision optional. As from claim year 2018 only 9 Member States/ regions<sup>7</sup> apply the negative list.

When implementing the negative list Member States can also decide to expand it to include other similar activities, i.e. Public Administration (MT, BG, RO), Prisons, Forest Management and Construction (RO) see figure below.<sup>8</sup>

- c) The application of a test on all claimants. This possibility allows Member States to exclude claimants with a marginal agricultural activity (even if they do not perform an activity of the negative list) or whose principal activity/company object is not agriculture<sup>9</sup> (EL, NL);
- d) The omnibus regulation has also introduced from 2018 the possibility of considering active farmers only those registered for their agricultural activities in national fiscal or social security register (IT and RO)<sup>10</sup>.



However, those who received less than a certain amount of direct payments in the previous year are considered *de facto* active farmer (except for the farmers falling under point a) above (Article 9(1)).

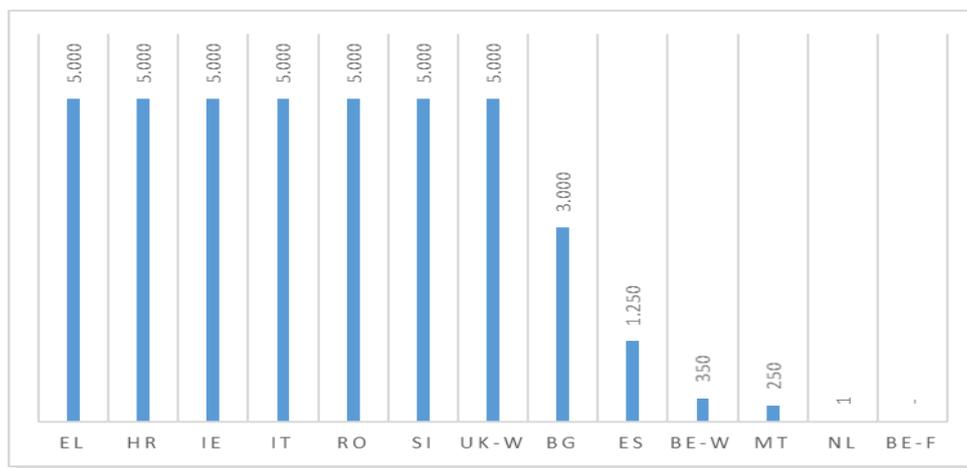
This amount is set by Member States but may not be higher than € 5000, see below the thresholds set by Member States/regions, where applicable.

<sup>7</sup> BE, BG, HR, IE, MT, RO, ES, SI, UK-W

<sup>8</sup> Summary of all implementation choices related to the active farmer provisions: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/simplemplementation-decisions-ms-2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/simplemplementation-decisions-ms-2018_en.pdf)

<sup>9</sup> Article 9(3) of Regulation (EU) No 1307/2013

<sup>10</sup> Article 9(3a) of Regulation (EU) No 1307/2013



Exemption thresholds from active farmer provisions

For more information on the implementation of the Active Farmer provision, please see the note: [Active Farmer - Decisions taken by Member States following the entry into force of the omnibus Regulation](#).

### 3. TO PERFORM AN AGRICULTURAL ACTIVITY ON ELIGIBLE AGRICULTURAL LAND

To receive direct support, an active farmer should have agricultural land at his/her disposal and the agricultural land should be used for an agricultural activity.

- **Definition of an agricultural area**<sup>11</sup>

As a general rule only land suitable to produce agricultural products is considered as agricultural area. Forests are in principle not eligible.

Agricultural area is thus defined as one of the following:

- ⇒ **Arable land:** land cultivated for crop production or areas available for crop production but lying fallow, including areas set aside in accordance with certain Rural Development measures. Greenhouses are considered eligible provided the land maintains the characteristics of an agricultural area. However, in specific situations, e.g. cultivation of plants in pots with no interaction of the plants roots with the soil, or greenhouses where the soil is concrete (e.g. hydroponic cultivation), the areas are considered not eligible because the soil is not contributing to the development of the crop.
- ⇒ **Permanent crops:** non-rotational crops other than permanent grassland and permanent pasture that occupy the land for five years or more and yield repeated harvests, including nurseries and short rotation coppice.
- ⇒ **Permanent grassland and permanent pasture:** land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that has not been included in the crop rotation of the holding for five years or more. Other species such as shrubs and/or trees which can be grazed are considered part of the area provided that the grasses and other herbaceous forage remain predominant. Pursuant to the omnibus regulation, as from claim year 2018 Member States may decide that land which has been ploughed within a period of five years remains arable land, even if used for cultivating grass for more than 5 consecutive years.

<sup>11</sup> Article 4(1)(e) of Regulation (EU) No 1307/2013

In addition, as to recognise the ecological and agricultural value of some areas with extensive traditional pastoral/agricultural systems, Member States may decide to include in the category of permanent grassland:

- land which can be grazed even though grasses and other herbaceous forage are traditionally not predominant or are absent in grazing areas. This may be justified by established local practices.
- as from 2018, pursuant to the omnibus regulation, land including shrubs and /or trees which produce animal feed, provided that the grasses and other herbaceous forage remain predominant.

The national administrations duly identify areas under established local practices in their Land Parcel Identification System (LPIS). 10 Member States decided to implement this extension of the definition of permanent grassland (PG), which may be justified by any or a combination of the following practices<sup>12</sup>:

- (a) practices for areas for livestock grazing which are traditional in character and are commonly applied on the areas concerned;
- (b) practices which are important for the conservation of habitats<sup>13</sup>

<b>Decision to extend the definition of PG in case of established local practices</b>									
a) (traditional practices) and/or b) (conservation of habitats)									
DE	IE	EL	ES	FR	IT	CY	PT	SE	UK
a+b	a	a+b	a+b	a	a	a	a	a+b	a

Following the adoption of the omnibus regulation, from 2018 several MS decided to use the new flexibility, see below:

<b>Decision that the land is not considered "permanent grassland" if ploughed within a period of five years</b>									
BG	DE	EL	ES	HR	IT	CY	LT	SK	
<b>Decision that permanent grassland may include other species such as shrubs and/or trees which produce animal feed, provided that the grasses and other herbaceous forage remain predominant</b>									
EL		ES			FR		PT		
<b>Decision that permanent grassland may include land which can be grazed where grasses and other herbaceous forage are not predominant or are absent in grazing area (not limited to established local practices)</b>									
EL		ES			FR		UK (EN, NI, SC)		

<sup>12</sup> See Article 7 of Commission Delegated Regulation (EU) No 639/2014

<sup>13</sup> Covered by Annex I to Council Directive 92/43/EEC, and of biotopes and habitats covered by Directive 2009/147/EC of the European Parliament and of the Council

- **What is an eligible hectare?**<sup>14</sup>

First, for the purpose of establishing eligibility on an annual basis, the farmer needs to declare the **parcels at his/her disposal**. He/she must have decision making power and bear the benefits and financial risks in relation to the agricultural land for which direct support is requested. There is no provision that stipulates that the farmer should own the land, neither the exact nature of the legal relationship on the basis of which the area concerned is held by the farmer. In fact, the farmer should have a factual possession of the land and a degree of autonomy over the area that is sufficient for the carrying-out of the agricultural activity.

As a general rule, in the context of direct payments, **eligible hectare** means any agricultural area of the holding **that is used for agricultural activity**<sup>15</sup>. The agricultural area can also be used for non-agricultural activities, as long as the agricultural activities are predominant, i.e. the agricultural activities can be exercised on the area without being significantly hampered by the intensity, nature, duration and timing of the non-agricultural activities. This is to be assessed by the national administrations on a case-by-case basis. Member States may also draw a list of areas which are deemed ineligible without further assessment because of the fact that they are typically not predominantly used for agricultural activities. Examples of areas included in their lists by Member States are: natural and recreational areas, parks, airport strips, playgrounds.

**Member States having drawn a list of areas predominantly used for non-agricultural activities**

BE (FL)	DE	IE	LV	NL	AT	SI
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- **Scope of the agricultural activity**<sup>16</sup>

In order to be considered eligible to payments, any single part of the agricultural area should be utilised for an agricultural activity each year. However areas which may no more be used for an agricultural activity as a result of specific commitments (e.g. afforested, set aside, or converted in the framework of Directives Natura 2000) may also be eligible to direct payments under certain conditions<sup>17</sup>.

In the framework of direct support, the agricultural activity is defined as:

(i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes

(ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries. This applies to land which farmers decide not to use for production. It is for Member States to set the criteria that farmers are to meet in order to fulfil the obligation to "maintain the agricultural area in a state suitable for grazing or cultivation". The criteria may be based on either or both of the following ways<sup>18</sup>: by

<sup>14</sup> Article 32(2) of Regulation (EU) No 1307/2013

<sup>15</sup> Point (b) of Article 32(2) of Regulation (EU) No 1307/2013 stipulates other cases of eligibility

<sup>16</sup> Article 4(1)(c) of Regulation (EU) No 1307/2013

<sup>17</sup> Article 32(2)(b) of Regulation (EU) No 1307/2013

<sup>18</sup> Article 4 of Commission Delegated Regulation (EU) No 639/2014

requiring the farmer to carry out at least one annual activity, or by setting the characteristics to be met by the land. Moreover, Member States may decide that those criteria are differentiated depending on the type of agricultural areas. In doing so, most Member States opted for the agronomical distinction between arable land, permanent crop and permanent grassland. Some of them used other criteria (e.g. altitude).

For arable land available for crop production but lying fallow, most Member States introduced requirements in terms of mowing the vegetation, avoid encroachment of any woody plant, tilling (ploughing, disking).

For permanent crops not used for production, usually orchards, Member States often request that the vegetation between the rows is mowed, and that the plants are maintained in good vegetative conditions (e.g. pruned).

For permanent grassland most Member States request farmers to mow at least once a year and avoid encroachment of woody plants.

(iii) carrying out a minimum activity, defined by Member States<sup>19</sup>, on agricultural areas naturally kept in a state suitable for grazing or cultivation, where relevant. The Member States which have identified this type of areas on their territory are the following:

Member States having notified to have areas naturally kept							
BE (FL)	CY	FR	DE	IT	RO	SK	UK (SC-WA)

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<sup>19</sup> On the basis of the framework set in Article 5 of Commission Delegated Regulation (EU) 639/2014

**Annex*****Decisions of Member States on minimum requirements***

MS Region	MS/Region	Point a (amount threshold) - EUR	Point b (area threshold) - ha	
				Farmers implementing animal related VCS, with less than area threshold (EUR)
Belgium Flanders	BE/F	€ 400		
Belgium Wallonia	BE/W	€ 100		
Bulgaria	BG		0,5	€100
Czech Republic	CZ		1	€100
Denmark	DK		2	€300
Germany	DE		1	
Estonia	EE		1	€100
Ireland	IE	€ 100		
Greece	EL	€ 250		
Spain	ES	€ 100(2015) € 200(2016) € 300(from 2017)		
France	FR	€ 200		
Croatia	HR		1	€100
Italy	IT	€ 250(2015-2016) € 300(from 2017)		
Cyprus	CY		0,3	€100
Latvia	LV		1	€100
Lithuania	LT		1	€100
Luxembourg	LU	€ 100		
Hungary	HU		1	€100
Malta	MT		0,3	€100
Netherlands	NL	€ 500		
Austria	AT		1,5	€150
Poland	PL		1	€200
Portugal	PT		0,5	€100
Romania	RO		1	€100
Slovenia	SI		1	€100
Slovakia	SK		1	€100
Finland	FI	€ 200		
Sweden	SE		4	€100
United Kingdom England	UK/E		5	
United Kingdom Northern Ireland	UK/NI		3	
United Kingdom Scotland	UK/S		3	€100
United Kingdom Wales	UK/W		5	